

1 Q What did you mean by product market
2 fit?

3 A The idea that the system could work,
4 technically, precisely the way it was supposed
5 to. It could execute flawlessly and it not
6 fit people -- people's actual uses. Like the
7 actual use that it has, not be one that people
8 found interesting or appealing. It would do
9 its job perfectly fine. That would not be
10 what anyone wanted something to do.

11 Q In other words, there would be no
12 adoption?

13 A Right.

14 Q No demand?

15 A Right.

16 Q What were the regulatory risks? I
17 don't want you to disclose any conversations
18 you had with lawyers.

19 A We were -- we were -- this was a
20 business unlike any business that anyone had
21 engaged in before. And there's -- there's
22 always a risk that, both known and unknown,
23 that, you know, regulations -- the von NotHaus
24 case had become public at that -- he had been
25 convicted at that time.

1 So there was concern inside the
2 cryptocurrency community, generally, that
3 these tokens might be inherently counterfeit.
4 There was a fear of state consumer protection
5 laws. And also, just a long list of those
6 types of concerns.

7 Q Was there any concern that XRP --
8 was there any concern in connection with the
9 Federal Securities laws?

10 MR. CERESNEY: Again, you are not
11 going to reveal any discussions with counsel.

12 Q No. And again I'm talk about this
13 very early time period. And maybe we can --
14 was -- did the company have counsel at the
15 time?

16 A Yes, we did.

17 Q Who was the counsel?

18 A Give me a second -- I know their
19 name. Sorry. I'm just --

20 Q Was it [REDACTED]?

21 A No, I don't believe so. At least
22 that name doesn't --

23 Q Was it the law firm of Perkins Coie?

24 A That's the company. Yes. I believe
25 it was Perkins Coie at that time.

1 Q Do you remember the name of the
2 lawyer?

3 A I think it was [REDACTED] That
4 names comes to mind. I think.

5 Q Did you ever meet with him?

6 A I did.

7 Q I don't want to know what was
8 discussed, but when was your first meeting
9 with him?

10 A I believe it was around -- around
11 the time of the formation of the company and
12 the time that we were pitching to those early
13 investors.

14 Q So around 2012; do you know the
15 month?

16 A I do not.

17 Q Who was present at the meeting?

18 A I don't specifically recall.

19 Q Where was the meeting held?

20 A I don't recall.

21 Q Don't tell me what was discussed in
22 the meeting, but what was the purpose of the
23 meeting?

24 A The purpose of the meeting was to --
25 to enable the -- to enable our attorneys to

1 assess what the regulatory risks were.

2 Q Was that the first time you had an
3 in-person meeting with Perkin's lawyers?

4 A I believe so.

5 Q Did you ever participate in any
6 conference calls or telephone calls?

7 A I don't recall any.

8 Q Did you ever participate in any
9 other meetings?

10 A I don't recall any.

11 Q I apologize if I asked you this, but
12 who was present at that initial meeting?

13 A I don't have any recollection.

14 Q Was Chris Larsen present?

15 A I don't know.

16 Q Was [REDACTED] present?

17 A I don't know.

18 Q Arthur Britto?

19 A I don't know.

20 Q Jed McCaleb?

21 A I don't know.

22 Q Was it in San Francisco?

23 A I don't remember traveling. But I
24 don't -- I don't recall the location.

25 Q When you say you don't remember

1 traveling, outside of California?

2 A Correct. I would have been more
3 likely to remember a longer trip, is what I'm
4 saying. Since I don't recall one, it doesn't
5 seem likely to me. But I don't specifically
6 recall a location.

7 Q Going back to the conversations with
8 investors when you were pitching the
9 investment, what did you tell them about the
10 regulatory risk that XRP -- if -- did you tell
11 investors that there was regulatory risk that
12 XRP could be viewed as a security?

13 A I believe we had a list of
14 specifically identified regulatory risks. And
15 that would have been on that list.

16 Q Why would it be included as a
17 regulatory risk?

18 A I -- I don't know.

19 Q Did you discuss with anyone, other
20 than your lawyers, why there would be a risk
21 that XRP could be deemed a security?

22 A I don't believe --

23 Q At that time. I'm talking about in
24 the 2012 time period.

25 A I don't believe so.

1 Q Did you ever discuss it later on
2 with anyone other than lawyers?

3 A I don't recall any conversations
4 like that.

5 Q Did you ever discuss -- strike that.
6 This is just semantics, but at the
7 time the company was formed, what was Chris
8 Larsen's title?

9 A CEO.

10 Q And Jed's?

11 A I -- I don't know. We referred to
12 him as a cofounder, but I don't know how that
13 was reflected initially.

14 Q Your title again at the time?

15 A I believe at that time, my title was
16 established as chief cryptographer.

17 Q Did you report to anybody?

18 A I reported to Chris Larsen.

19 MR. CERESNEY: This might be a good
20 time for a break. A little bit more than an
21 hour. But up to you.

22 MS. WAXMAN: It would be a good time
23 for a break. But we have a long day. It's up
24 to you, however you feel.

25 MR. CERESNEY: Good time for a

1 break.

2 THE WITNESS: All right.

3 MS. WAXMAN: I'll use my discretion
4 when necessary. We are off the record. Thank
5 you. We are off the record at 11:04.

6 (A brief recess was taken.)

7 MS. WAXMAN: We are back on the
8 record at 11:19 a.m.

9 Q Mr. Schwartz, before we took a
10 break, we spoke -- we were talking about a
11 meeting that you had with lawyers from the law
12 firm of Perkins Coie.

13 And you said that the purpose of the
14 meeting was to enable attorneys to assess
15 regulatory risks with respect to the company;
16 is that correct?

17 A That is correct.

18 Q Did the company ever provide a
19 written opinion as to the regulatory risks?

20 A Yes.

21 MR. CERESNEY: You said, "the
22 company provide a written opinion."

23 Q Did the law firm ever provide --

24 MR. CERESNEY: Yeah.

25 Q -- a written opinion?

1 A Yes.

2 Q Did you ever see that opinion?

3 A Yes.

4 Q I'm showing you what's been

5 previously marked as Exhibit 48.

6 MS. WAXMAN: I don't have extra

7 copies, but --

8 MR. CERESNEY: Do you have one?

9 Yeah. We'll look at one.

10 (The witness examined the document.)

11 Q Is this the legal opinion you were
12 talking about?

13 A I'm not certain that this is the one
14 that I saw. I subsequently became aware that
15 there were two versions of this document. I
16 think one included information about the
17 decentralized exchange and one didn't. I'm
18 not sure which one I saw or -- whether this is
19 the one that I saw.

20 Q Is this the updated version of the
21 memo?

22 A I'm -- I'm not sure. I believe this
23 is the one we showed to early investors, but
24 I'm not certain.

25 Q Why do you think this is the one

1 that you showed to early investors?

2 MR. CERESNEY: Again, just be
3 careful when you answer this not to reveal
4 what might be in a different opinion that
5 hasn't been exposed. But you can answer the
6 question, just keep that in mind.

7 A It seems to be based on our
8 understanding of what the company might be
9 doing at that time.

10 Q That's why you think it was -- this
11 is the one that was distributed because it
12 comports with what the strategies were at the
13 time?

14 A That's how it looks to me looking at
15 this memo.

16 Q Was there a strategy that was
17 discussed that wasn't incorporated in the
18 memo?

19 A I don't think there was at that
20 time. Oh, no. I apologize. This is the
21 updated memo. I see now.

22 Q What page are you referring to?

23 A On page two, in the middle of the
24 page. It says, "Transactions conducted on the
25 Ripple network using third-party Ripple

1 currencies are reflected in the Ripple network
2 ledger."

3 Q What is that referring to?

4 A That's referring to the
5 decentralized exchange feature.

6 Q Of the XRP Ledger?

7 A Yes.

8 Q Other than Ripple investors, who
9 else saw this memo?

10 A I know Chris and Jed did. I know I
11 did. I'm fairly confident we showed it to
12 investors. Beyond that, I don't know.

13 Q Did Arthur Britto receive a copy?

14 A I don't know.

15 Q Did [REDACTED] receive a copy?

16 A I don't know.

17 Q Did [REDACTED]?

18 A I don't know.

19 Q Did you ever -- I want to -- first
20 is ripple credits another name for XRP?

21 A I believe so. I believe they're
22 using the term ripple credits to what we now
23 refer to as XRP.

24 Q The very first page, first paragraph
25 says, "We provided you our initial analysis in

1 a memorandum dated February 8, 2012."

2 A Okay. Yes. So this is definitely
3 updated. I'm not sure today which one of
4 these or whether I saw both of them at the
5 time. I know I did see a memo. I'm pretty
6 confident it was either this one or the
7 predecessor. But I don't recall at this time
8 which of those I saw.

9 Q Do you think the predecessor was
10 distributed to investors?

11 A I don't know.

12 Q Would the date of the memo help you
13 recall?

14 A I doubt it. I don't know.

15 Q Going back to that meeting at the
16 law offices of Perkins, was [REDACTED]
17 present? Or --

18 A I just want to clarify, I don't
19 recall where that meeting was. Whether it was
20 at our office, Perkin Coie's office or
21 elsewhere. Sorry.

22 Q That's okay. Thank you.

23 Do you recall [REDACTED]? He's
24 one of the authors on the memo.

25 A I don't recall [REDACTED] at all.

1 Q Or [REDACTED]?

2 A I don't recall.

3 Q Was this memo distributed on -- in
4 later dates in 2013, 2014 or any other time?

5 A I don't know.

6 Q If you go to the recommendation
7 section of the memo, which begins on page six.

8 A Yes.

9 Q Just take a moment. Six, seven.
10 Take a moment to look at it if you are not
11 familiar with it.

12 (The witness examined the document.)

13 A Yes.

14 Q Did you discuss any of these
15 recommendations outside the presence of
16 counsel?

17 A I don't believe we had any
18 conversations that I was involved in around
19 those recommendations.

20 Q Did the company's business -- how
21 did the company's business strategy change, if
22 at all, as a result of these recommendations?

23 A I think -- I think our strategy was
24 so vague at that time that I don't think -- I
25 don't think it did.

1 Q If you go to page four of the memo,
2 paragraph B.

3 A Yes.

4 Q Did you ever discuss with anyone at
5 the company -- and again, I don't want to know
6 any conversations you had with counsel.

7 Did you ever discuss obtaining
8 guidance from the SEC with respect to XRP
9 sales?

10 A I don't -- I don't remember any such
11 conversations.

12 Q Do you know what a no-action letter
13 is?

14 A I've heard the term used. I don't
15 know specifically what it is.

16 Q Do you have a general idea of what
17 that entails or what that means, to get a
18 no-action letter from the SEC?

19 A Not really.

20 Q On the top of page three, it says,
21 "Company will control the distribution of
22 ripple credits. Which it will distribute to
23 end users, consumers, for no consideration."

24 Was that a recommendation made?

25 A I think that was more how we

1 described our strategy at the time.

2 Q Why was your strategy at the time to
3 give away the XRP for no consideration?

4 A Well, it had no value. So you
5 couldn't get any consideration in exchange for
6 it and people needed it to access the ledger.
7 So the idea was that if we wanted people to
8 use the ledger, they would have to get XRP
9 somehow. And the only strategy that we had at
10 that time, was essentially just to give it
11 away to people.

12 Q Why do you say the XRP had no value
13 at the time?

14 A There was -- there were no markets,
15 there was no established price. I -- I'm not
16 sure of the exact time frame. But this --
17 this concept of the company giving it away --
18 well, yeah, at that time they would have been.
19 There would have been no price. There would
20 have been no market. There would have been
21 no -- the only utility was that you could use
22 them to pay for transactions on the ledger.
23 And obviously nobody was using the ledger at
24 the time. So there was no -- there was no
25 other plausible strategy at that time.

1 Q In October 2012, had XRP, the XRP
2 that is currently in circulation today, had
3 that been created?

4 A It gets to be a difficult -- it gets
5 to be difficult because the term of the XRP
6 that's in circulation today, is difficult to
7 precisely define. I believe in October --
8 I -- I don't know the exact dates.

9 Q When was the ledger -- I understand
10 that the ledger was reset multiple times?

11 A That's correct.

12 Q When was the final reset where the
13 XRP was created?

14 A I don't -- I don't -- I would have
15 to check. I don't recall. I believe late
16 2012. Late 2012.

17 Q Before Open Coin was formed?

18 A Yes.

19 Q And do you believe after -- was the
20 ledger reset after Open Coin was formed?

21 A There were numerous ledger resets.
22 And there were ledger resets that -- there
23 would sometimes be a ledger reset and it
24 wasn't necessarily the case that the reset
25 ledger would become the active ledger.

1 Sometimes the existing ledger continued. And
2 it was all based on technical necessity at the
3 time. And I -- there would -- I don't recall
4 when the last ledger reset that affected the
5 active stream was.

6 Q When you say you don't recall, you
7 don't recall if it was before or after the
8 formation of the Open Coin?

9 A Well, when there was a ledger --
10 when there was a ledger reset, you would
11 reconstruct the state prior to the ledger
12 reset. And then essentially, the change that
13 was -- although they look like they're just --
14 they look like they're abrupt changes because
15 you can't walk history across a ledger reset.
16 There's continuity across them because the
17 subsequent state and the prior state are the
18 same.

19 The reason you would have a ledger
20 reset was because there was a change in the
21 way information was represented. So that you
22 couldn't have the same code understanding the
23 format before the reset and after the reset.
24 So if we discovered some problem with the
25 representation or made some change in it, then

1 we would change the code and such a way that
2 it couldn't understand the previous
3 information and could understand the
4 subsequent information.

5 But the state carries across. It
6 just may require some translation. So it gets
7 to be a semantic question whether that creates
8 a new token. If your bank switches the
9 software that they use to represent your
10 balance and you have balance in a new software
11 system by the bank, is it the same balance
12 or -- it gets to be a question of semantics.

13 Q How often do you reset the ledger?

14 A So -- when -- every time you run the
15 software, it resets the ledger. That's the
16 first thing it does. Any time somebody
17 would -- today, if you grabbed the XRP Ledger
18 software and you start it up on your computer,
19 it will reset the ledger. Now, that new
20 ledger stream, it may be that nobody uses it.
21 You may discard it immediately and then switch
22 to the one that everybody else is using.

23 But that happens constantly. We had
24 one system of computers that Jed controlled
25 that we considered like the -- once the system

1 was open to the public, we had this cluster of
2 three computers at the time that we considered
3 like the real or the live ledger. And that
4 was reset only when there was some technical
5 reason to do so. Which I would say -- I don't
6 remember the exact time frame in which that
7 happened. But any time we made a technical
8 change that necessitated a reset of the
9 ledger, Jed would reset the ledger.

10 Q Did other people reset the ledger
11 for other reasons?

12 A I don't think anybody else reset
13 the -- sort of live ledger. The ledger --
14 before we opened the ledger to the public,
15 there really wasn't a live -- the -- there
16 were various different ledgers used at various
17 times. Once the ledger was open to the
18 public, there was sort of a live ledger. And
19 I believe Jed -- Jed operated that.

20 Q When was the ledger opened to the
21 public?

22 A I believe it was early 2013. No, it
23 would have been prior to that. I would have
24 to -- I would have to check.

25 Q Did Jed reset the ledger after it

1 went live?

2 A I don't believe there were any
3 ledger resets after the ledger was opened to
4 the public. It was open to the public in two
5 phases. There was like a semipublic phase
6 where we invited people to use it. And then
7 there was a fully public phase where it was
8 completely open to anybody. And I don't
9 remember exactly how that -- what the timing
10 was around that transition.

11 Q Did Jed reset the ledger before the
12 first pre-public opening of the ledger?

13 A I don't -- I don't remember. I was
14 much less involved in that process than you
15 might think. I was still working on the
16 development. And I wasn't particularly -- I
17 was in a rush to get as many features in as I
18 possibly could.

19 Because I knew as we opened the
20 ledger to the public, it would become
21 progressively more difficult to change its
22 functionality. The more people who know how
23 to use something, the harder it is to change
24 how to use it. I was very focused on getting
25 as much done prior to that sort of lockdown as

1 I possibly could.

2 Q So every time there was a -- I want
3 to make sure I understand it because it's very
4 technical.

5 So every time there was a ledger
6 reset, were new coins created?

7 A Yes.

8 Q And where were the coins stored?

9 A They're just on that particular
10 machine. They're just in that record.

11 Q Are they in a -- held in a wallet?

12 A Oh, yes. They are. The system,
13 when you first start it up, it creates a sort
14 of a -- you could think of it as a wallet.
15 It's an account that's just -- it has a
16 well-known key. So anybody who knows that key
17 can access that account.

18 Q The well-known key, is that similar
19 to what people refer to as a "private key"?

20 A Yes.

21 Q In order to transfer funds from the
22 wallet, did you need to have the well-known
23 key?

24 A You did. But again, it was well
25 known.

1 Q When you say, "it was well known,"
2 who knew it?

3 A Anybody who had looked at the
4 software -- anyone who looked at the software
5 new it, which included people outside the
6 company at that time.

7 Q Was it on **GitHub** or --

8 A It was on **GitHub**. I think it was
9 the code was set private at that time. So it
10 would have -- but it would have been known to
11 people both inside and outside the company.
12 And today, that account is still there. And
13 of course, now it's known to everybody.

14 Q You mean the key --

15 A Yes, the key is literally well known
16 now.

17 Q Is anything in the wallet?

18 A It's actually kind of amusing. There
19 were -- there were funds remaining in the
20 wallet when the system was open to the public.
21 So people were taking XRP out of that wallet
22 and messing with it. And subsequently,
23 someone did lock it down just to sort of end
24 that. But yes, that wallet continues to exist
25 in the ledger to this day because there's no

1 process of removing one.

2 Q At the point when the ledger went
3 live, were the XRP transferred out of the
4 wallet?

5 A I would -- I believe the practice
6 was prior to a ledger become live, the state
7 of the system would be put in a -- in the
8 correct state to match the prior one. And
9 then once the states were matched, then you
10 could transition. So in other words, you'd
11 have the existing ledger and you have a new
12 ledger and once that new ledger sort of
13 matches the state of the existing ledger, then
14 you would replace the existing ledger with the
15 new ledger. So you had continuity across the
16 technical representation change.

17 Q I understand what it means to set a
18 transaction to change the state of the ledger.

19 But my question is, before the
20 ledger went live, there are a hundred billion
21 XRP in a wallet. Once it goes live, are those
22 XRP still sitting in that same wallet with
23 people -- with everybody and everyone
24 knowing -- having access to that wallet?

25 A Yes. And that's why the usual

1 practice would be prior to bringing a ledger
2 live, restoring the state of the balance.
3 It's the same thing a bank would do if they
4 were changing their software. They would
5 configure the software to represent
6 everybody's balances correctly. And then they
7 would replace the existing software with the
8 new software once the representations matched
9 in the two of them.

10 Q Once the ledger went live, the state
11 was no longer as it was previously. The state
12 could be that some of the XRP was transferred
13 to other addresses?

14 A Right. And the normal process would
15 be to match the existing state so that there
16 would be continuity across.

17 Q Prior to the ledger going live, did
18 someone send a transaction to change the state
19 and change the balance in the wallet?

20 A I believe there was an automated
21 process to do that for you.

22 Q But who -- but someone needed to
23 send the transaction to change the state,
24 right?

25 A Yeah. There was a script that would

1 do that as part of the deployment process.

2 Q Wouldn't someone have to send a
3 message to run the script?

4 A Yes. That would be -- someone would
5 have to initiate the process of replacing.
6 Someone would have to initiate that process.
7 And my understanding is Jed was the person who
8 would typically do that.

9 MS. WAXMAN: We are going down a
10 rabbit hole.

11 THE WITNESS: Sorry.

12 MS. WAXMAN: It's okay. My fault.

13 Q Going back to why the company gave
14 away the XRP for no consideration, was there
15 any legal --

16 MR. CERESNEY: Whether it did or
17 didn't. That's what it says it's going to do.
18 So -- right? Right.

19 Q The recommendation was to provide
20 XRP for no consideration.

21 Is that what the company did?

22 A Yes, that was the initial strategy.

23 Q When did you start doing that?

24 A Fairly immediately. As soon as the
25 ledger was -- as soon as we opened the ledger

1 up to people who wanted to be invited to test
2 it, we had to give them XRP because they
3 couldn't interact with the ledger any other
4 way. When we opened the ledger to the public
5 generally, we started a series of giveaways so
6 that people could ask for XRP one way or
7 another. And then we would give them XRP so
8 that they could interact with the ledger.

9 Q What was the purpose of the
10 giveaways?

11 A To enable people to interact with
12 the XRP Ledger.

13 Q How were they to interact with the
14 ledger?

15 A They -- once the ledger was open to
16 the public, there were -- there were tools
17 that you could use to submit transactions and
18 correlate the state of the ledger. And you
19 needed XRP to pay the transaction fees.

20 Q Just more generally, why would
21 someone be using XRP and sending it on the
22 ledger?

23 A In the very --

24 Q Just more basic, in like
25 non-technical.

1 A In the very early days, it would
2 have been to explore the capabilities of the
3 XRP Ledger. A decentralized exchange was new.
4 And it had some internal differences from the
5 way Bitcoin was designed. It had an account
6 model and some other different things. So
7 that enabled people to test out those features
8 and explore them.

9 Q Aside from just testing out the
10 technology, was Ripple promoting a particular
11 use at the time?

12 A At the time, the use case that we
13 were promoting was the decentralized exchange.
14 This idea that you would use XRP to pay for
15 transactions, that would allow you to move
16 between other assets. Target -- the target
17 marketing was somewhat similar to -- sorry. I
18 lost my train of thought.

19 But the target user would be like
20 someone who wanted to move between
21 cryptocurrencies and fiat assets on a
22 decentralized exchange. Or people who wanted
23 a way to pay -- a universal decentralized way
24 to move fiat denominated assets around.

25 Q How would broad adoption of the

1 decentralized exchange benefit Ripple?

2 A Broad adoption of the decentralized
3 exchange would benefit Ripple in -- in both
4 concrete and not quite so concrete ways.
5 Starting with the somewhat abstract is Ripple
6 was associated with the XRP Ledger. People at
7 Ripple built the XRP Ledger. Adoption of the
8 XRP Ledger would draw people towards Ripple as
9 sort of the experts of the XRP Ledger. Which
10 could mean selling products and services that
11 interact with the XRP Ledger. It could be
12 just various ways of like partnering with
13 companies that were operating on the ledger.
14 It wasn't very well-defined at that time.

15 Q Did you think, generally, the more
16 XRP we get out there, it will have a benefit
17 to the company in some way?

18 A I think we did think that the more
19 people who were able to interact with the XRP
20 Ledger, the better the chances are of the XRP
21 Ledger getting adoption. Which would
22 ultimately drive a market for people to have
23 software that would interact with the XRP
24 Ledger or wallets or exchange services or
25 technical services or whatever -- whatever the

1 company would do.

2 Q Would it also drive demand for the
3 asset itself?

4 A You might think it would, but that
5 was definitely not -- that was not something
6 that we were -- that was not a credible
7 consideration at the time. That would have
8 been very speculative.

9 Q Would it also drive the price of the
10 asset up?

11 A We didn't think so. Because we
12 thought that the utility of the asset at the
13 time was to pay transaction fees. So -- and
14 the cost is so small. You are talking about a
15 tiny fraction of a penny. Like a microscopic
16 fraction of the a penny. That the idea
17 that -- like that could build demand for the
18 asset that would build value, it was not
19 plausible at that time. It wasn't until
20 significantly later.

21 Q Well, when significantly later?

22 A I -- I would say sometime around --
23 again, it would help if I looked at the price
24 of XRP. But my intuition is that it's around
25 2014.

1 MR. CERESNEY: Before, you said
2 2015. But then you couldn't figure out a date
3 so you said, "five cents." Is it the same
4 answer, basically, as before?

5 THE WITNESS: Generally speaking,
6 yes. As -- it didn't -- there wasn't like a
7 defining point at which it changed. It was a
8 sort of gradual realization as a market became
9 established. Exchanges began to operate.
10 Other cryptocurrencies than Bitcoin, sort of
11 legitimized the space that we were in. The
12 values started to go up. And the landscape
13 very gradually changed. There isn't one
14 defining point that you could say this it the
15 point that everything changed. It was a very
16 gradual change over a period of time.

17 (SEC Exhibit Nos. 71 and
18 72 were marked for
19 identification.)

20 Q I'd like to show you what's been
21 marked as Exhibit number 72, which is an
22 excerpt from the bitcointalkforum.org. The
23 posts are from -- the first post on the first
24 page is from December 11, 2013. And I'm not
25 going to ask you about the whole document.

1 I'd like to direct you to the third page at
2 the bottom, post number 186.

3 (The witness examined the document.)

4 A Yes.

5 Q What are you explaining in that
6 post?

7 A I'm explaining the role of XRP on
8 the ledger.

9 Q Earlier, we spoke about the
10 technical reason to have XRP, to prevent spam.

11 How does XRPs improve liquidity?

12 A The idea -- the thinking at that
13 time was that the XRP was sort of a universal
14 asset. If you had an asset that was issued by
15 a gateway, it would be sort of -- it would be
16 limited to some group of people who were
17 interested in that particular asset. Whereas
18 XRP could be sort of like a neutral or
19 universal asset. And so having some universal
20 asset would be a way to make assets liquid to
21 each other. You'd just make -- if you have an
22 asset that you want people to easily buy and
23 sell, if it's liquid to XRP and other assets
24 are liquid to XRP, that makes the assets
25 liquid to each other.

1 Q Was this a strategy that the company
2 discussed before 2013 and in 2013?

3 A My recollection is, is that that
4 strategy became something that the company
5 adopted as a strategy sometime around the
6 beginning of 2014. So I think I was publicly
7 discussing it before it became a strategy of
8 the company.

9 Q Even though it didn't become a
10 strategy, were you discussing it?

11 A Yes. So anyone could use the XRP
12 Ledger for any purpose that they wanted to.
13 Whether that was part of Ripple's strategy or
14 not. And so while there were discussions
15 going on of what Ripple might do with the
16 ledger or what Ripple's revenue model might be
17 or who Ripple's target customers might be,
18 there was also conversation in the community
19 about what everybody else could use the XRP
20 Ledger for. There was no reason why what
21 people would use the XRP Ledger for had to
22 align with Ripple's strategy.

23 Q Okay. But did this use align with
24 Ripple's strategy?

25 A It did later. I don't know that it

1 did at that time. At some point around then,
2 Ripple sort of changed from the earlier, we
3 don't really know exactly what it's going to
4 be. But probably like Grassroots adoption
5 kind of strategy. Through the sort of
6 decentralized exchange gateway strategy to the
7 enterprise payment intermediate asset
8 strategy. This was around the time of that
9 change.

10 Q So number two is talking about using
11 XRP as an intermediate asset?

12 A Yes. Just to be clear, not really
13 as part of Ripple's strategy. As something
14 that other people could use the XRP Ledger to
15 do.

16 Q Was it not being discussed by you
17 and others at Ripple at the time?

18 A I believe it was being discussed,
19 but we had not -- it's hard to say because it
20 was around that time. That was around the
21 time we were discussing it. But I believe
22 that was shortly prior to the company deciding
23 on that as a strategy.

24 Q I guess a better question is, had
25 the company done anything to further develop

1 this idea at the time?

2 A I believe -- I -- it's hard for me
3 to pin the time down. But I believe that was
4 around the time that we were encouraging
5 exchanges to issue assets on the XRP Ledger.

6 Q The third thing you talk about is
7 the role that XRP plays within Ripple Lab's
8 business model.

9 A Mm-hmm.

10 Q How does XRP play a role in Ripple's
11 business model?

12 MR. CERESNEY: According to this or
13 generally?

14 Q Well, what do you say in the post?

15 A What I'm saying here is that Ripple
16 can extract value from XRP enabling it to --
17 to continue the giveaways.

18 Q Are you saying that Ripple is going
19 to sell XRP to fund the development of the
20 company?

21 A I'm not -- I'm not saying that. And
22 I think it's important to point out a subtle
23 difference. That you can extract value from
24 something ways other than selling it. And I
25 don't know if I was explicitly being careful

1 to say that or whether -- but -- but there is
2 a distinction between having something that
3 has value and extracting value from that and
4 selling it. So for example, Ripple could --
5 if Ripple gave somebody XRP to -- to build
6 some business, that is a greater incentive if
7 it has value than if it doesn't. Even though
8 you are not selling it, even though you are
9 giving it away, it's a greater incentive if it
10 has value. And so what I meant was --

11 Q Greater incentive to whom?

12 A To the recipient, because it has
13 value. Even if they're not going to sell it.
14 If it's something of value -- if it's
15 something that they would have to spend money
16 to get otherwise, for example, then that
17 enables -- that makes those strategies work
18 better as well.

19 Q You write, "XRP makes Ripple Labs
20 business model work, funding the development
21 of Ripple."

22 How would it fund the development of
23 Ripple?

24 A I wasn't being -- I didn't -- I
25 didn't provide anything specific at that time.

1 Or in this statement.

2 Q Did you understand that XRP was to
3 be used to fund the development of the
4 company?

5 MR. CERESNEY: At the time.

6 A I think this was about the time that
7 that was first -- that we were first talking
8 about that possibility. I'm not exactly sure
9 of the timeline. I -- I can't tell you
10 whether that was in my thinking at the time.
11 I suspect it was.

12 Q And why did you say XRP makes the
13 business model work? Could --

14 A What I was saying was that -- I'm
15 trying to be precise here -- what I meant was
16 that XRP allows Ripple to have -- the design
17 of the XRP Ledger allows Ripple to have a
18 large amount of XRP without having to outlay
19 funds to purchase it. If you can -- what I'm
20 saying here and I -- in the last paragraph, I
21 hit this pretty specifically.

22 If you contrast this with a
23 cryptocurrency that used mining someone could
24 still have a large stash of that
25 cryptocurrency. They would just have to

1 expend a lot of funds in order to do it. So
2 they would start out at a tremendous funding
3 deficit. And this enabled Ripple to start out
4 in a -- in a better financial position than a
5 company that had to mined a cryptocurrency
6 would have.

7 Q You are saying the fact that Ripple
8 had created a hundred billion XRP and had
9 immediate access to that hundred billion XRP
10 was a benefit to the company?

11 A Right. Contrasted with by having to
12 expend the funds, let's say to mined -- at the
13 time, the thinking was that a mined
14 cryptocurrency way fairer because anyone would
15 sort of have that opportunity. But of course
16 what happens is although everyone has the
17 opportunity, that doesn't mean everybody does
18 it. Generally, some small group of people
19 will do that and they have to expend funds in
20 order to do it. So they start out more poorly
21 situated than Ripple did.

22 Q Mining is pretty expensive these
23 days?

24 A Exactly.

25 Q Bitcoin mining.

1 A Right. That's the point I'm trying
2 to make. Or at least the primary point that
3 I'm trying to make here. And that's
4 consistent with the time frame in which this
5 post was made.

6 Q But other than -- I mean, without
7 XRP, what is Ripple Labs business model?

8 A Without XRP, Ripple's business --
9 Ripple Labs business model would be selling
10 soft -- would be investing in the space,
11 selling software, providing technical
12 services. And also, I think a significant
13 component at that time was the idea that the
14 space is rapidly changing. So there would be
15 opportunity for people to figure out where the
16 money was inside that space and capture it.

17 It's kind of the like the internet
18 Gold Rush. Where people were like we want to
19 be in this space because there's going to be
20 big businesses found here. And so if you're
21 in that space and you're sort of connected to
22 what's going on, you have an opportunity to
23 figure out where the money will be made in the
24 future and sort of latch on to it.

25 Q You said, around this time, the

1 company had the idea that XRP was going to be
2 used to fund the development of Ripple.

3 Does that mean that at that time XRP
4 had value?

5 MR. CERESNEY: Do you have a price
6 chart for XRP? Because I think that would
7 help him place in time some of these questions
8 you are asking, since he said a number of
9 times. Generally, I know that Mr. Schwartz is
10 not great with dates.

11 MS. WAXMAN: I don't have a price
12 chart with me. But I don't think he --

13 Q Let me know if you need it to answer
14 the question. You said that it -- at that
15 time, the idea was to use XRP to fund the
16 company. So wouldn't you assume XRP would
17 have value at that time?

18 A Yes. But I just want to clarify
19 that when you look at this today, from the
20 lens of today, knowing the amount of money,
21 for example, that Ripple has made from selling
22 XRP, you sort of -- it's natural to sort of
23 project that back to say that we were
24 anticipating millions of dollars coming in
25 from the sales of XRP.

1 We were trying to cover the
2 development expenses of a small team. We were
3 trying to explain why we thought that we
4 wouldn't go out of business, essentially.
5 Because if you thought that like -- it was
6 just a way of explaining that we were -- that
7 we were going to remain a member of the
8 community.

9 It would have been incredibly
10 fanciful at that time to suggest that -- we
11 use the term "business model" and you project
12 that back knowing what the company is now. We
13 just meant that we would be able to keep --
14 literally keep the lights on and pay the
15 programmers. You know. We were venture
16 capital funded at the time. And there was no
17 realistic expectation that it would produce
18 significant revenue.

19 Q I understand that perhaps people
20 didn't expect XRP to appreciate as much as it
21 has over the past several years. But my only
22 question is, if you believed at the time that
23 XRP had value?

24 A We definitely -- I -- I -- I
25 believe -- I would have to check the price

1 chart to be sure, but I believe it did have
2 value. I think it was clear at the time that
3 it would have some value. And that it was
4 plausible to argue that Ripples collection of
5 XRP could enable Ripple to continue operations
6 without necessarily having another funding
7 source.

8 Q I wanted to get our dates a little
9 more firm. So earlier, we were talking about
10 XRP not having value until 2015. Then we said
11 about 2014. This really talks about, this
12 date is -- this post is December 2013.

13 A I am not very good at placing events
14 in time. It's been -- I've been at this for
15 many, many years. I was so busy involved in
16 the development and I said so many things.
17 It's just very difficult for me to place
18 things in time afterwards. What I generally
19 will do is refer to things that are date
20 stamped. Like the development log of the
21 ledger, which is date stamped. The price of
22 XRP, which is date stamped. Specific
23 well-known events, like when the company was
24 founded. And then I can place things relative
25 to that. But asking me for a date in

1 isolation, I do do a very poor job.

2 Q I'm not placing blame at all. That's
3 why we have tons of documents to refer to.
4 I'm more than happy to refer to them to
5 clarify, you know, dates and events that we
6 talk about during today. So please don't
7 hesitate to let me know if there's something
8 you know exists that could help you with a
9 date.

10 Talking about dates, you said -- you
11 were talking about you recall the development
12 loop of the ledger?

13 A The log.

14 Q Development log of the ledger.

15 A Yeah.

16 Q What was the date of that?

17 A There's a log that tracks the
18 development of the ledger from the beginning
19 to the present day on GitHub.

20 Q You could pull up GitHub and see the
21 very first --

22 A Right. You can see the development
23 of the ledger from the beginning to present
24 day.

25 Q When did XRP beginning trading?

1 MR. CERESNEY: Trade --

2 Q That's my --

3 A When was it possible for people to
4 move XRP, would be when the ledger was open to
5 the public.

6 Q That live date we were talking about
7 earlier?

8 A I think it was open to the public --
9 it would have been early 2013, I believe. But
10 there were two -- there were two public
11 announcements. One was, I think we called it
12 a beta. Which is when we invited -- our
13 closed beta, when we invited people to
14 access -- outside the company to access the
15 ledger. Then there was an open-to-the-public
16 date. And I believe those were all in early
17 to mid-2013.

18 Q And when you said XRP was
19 available -- could be traded, was it on the
20 decentralized exchange only or could it be
21 traded elsewhere?

22 A You couldn't really trade -- you
23 could get XRP from Ripple's giveaways. You
24 could just ask somebody at Ripple for XRP and
25 they would just give you some because you

1 needed to access the ledger. There were
2 giveaways ongoing at that time. I don't think
3 there was any market. To get it on the
4 decentralized exchange, you would need some
5 asset to trade for it. And people might have
6 created experimental assets for testing
7 purposes. I don't know. There really was
8 no -- there was no economic way to get XRP at
9 that time.

10 Q Was it on digital asset platforms;
11 such as Bittrex?

12 A I don't believe so at that time. I
13 think that wasn't until significantly later.

14 Q I'm going to show you what's been
15 marked as Exhibit number 71, which is another
16 thread from BitcoinTalk Forum from 2013. I'm
17 going to ask you to look at the last page.

18 (The witness examined the document.)

19 A Yes.

20 Q In 2013, what did you on the message
21 board how the company would use XRP?

22 A You want me to read what I wrote?

23 Q You can. Or tell me in your own
24 words.

25 A What I wrote here was that Ripple

1 would use the XRP's that it holds to drive
2 adoption of what we now call the XRP Ledger.
3 And then -- and in some way, in some
4 connection with revenue. This is not -- not a
5 very precise statement here.

6 Q Did you also say that XRP would be
7 used to fund development of the company?

8 A I did.

9 Q And did you also say that -- how
10 would XRP be used to generate revenue?

11 A I didn't commit to any particular
12 way here. I think I was -- I think I probably
13 had in mind the same things that I was
14 discussing before. This is a little earlier.
15 So it might have been less well-formed at that
16 time.

17 Q Did you have discussions with Chris
18 Larsen and Jed McCaleb around this time about
19 using XRP to fund the company?

20 A I don't -- I don't specifically
21 recall. It would help to look at a price
22 chart to know whether -- how realistic that
23 would have seemed at that time. We were very
24 reactive to the price in the sense that like
25 it wasn't until the price went up, you know,

1 because of the growth in the space, that that
2 started to seem like something we would
3 consider.

4 Q Regardless of what the price was,
5 you say here that it's going to be used to
6 fund the company.

7 A Yeah. And -- and again, the point
8 that I'm trying to make is that Ripple is
9 going to be able to execute. If you look at
10 the context in this thread, the title of this
11 thread is why Ripple has failed. The concern
12 was that Ripple would literally have no money
13 and not be able to -- even our burn at the
14 time, much less than it is now. The concern
15 was literally that Ripple would have no money
16 at all. And the point that I'm trying to make
17 is that as long as the token has some value,
18 Ripple would not have to shut its doors.

19 Q So at this point, the token had some
20 value. We are not sure what the price was,
21 but it had value?

22 A I'm not certain. If it didn't, it
23 would have been less speculative to allege
24 that it would.

25 Q At this time, did the company have

1 any products?

2 A I -- I -- I think we had a wallet.

3 And I think we may have had a gateway tool.

4 Or certainly close to this time frame, we had

5 a wallet and a tool to enable gateways to

6 operate.

7 Q Was the company generating any

8 revenue?

9 A I don't think the company was

10 generating revenue at that time.

11 Q Do you know when the company began

12 to generate revenue? During what time period?

13 A I don't.

14 (SEC Exhibit No. 73 was

15 marked for

16 identification.)

17 Q I'm showing you what's been marked

18 as Exhibit 43 (sic), which is a document

19 entitled "The Ripple Protocol, A Deep Dive for

20 Finance Professionals." I'm trying to find the

21 date -- at the very bottom of the page it

22 says, "November 2014."

23 (The witness examined the document.)

24 A Is there a particular section --

25 Q I'm going to ask you some questions

1 about page seventeen and page forty-five.

2 A All right. Give me a moment to read
3 those pages.

4 Q Sure.

5 MR. CERESNEY: Seventeen?

6 MS. WAXMAN: Yes.

7 THE WITNESS: Seventeen and
8 forty-five.

9 (The witness examined the document.)

10 A Okay.

11 Q In -- do you recognize the document?

12 A I'm not sure if I've seen this
13 document before.

14 Q Did you draft any of the language in
15 it?

16 A I don't believe so.

17 Q I know you haven't seen it. Do you
18 know how this document was used?

19 A No.

20 Q In November 2014, how did XRP fit
21 into Ripple's business model?

22 A At that time, the primary business
23 model -- in 2000 -- let me just look at the --

24 (The witness examined the document.)

25 Q What does it say in the document?

1 A Well, this document is specifically
2 talking about Ripple's XRP distribution plan.
3 At least in that last paragraph.

4 Q What page are you talking about?

5 A Page seventeen.

6 Q What does it say about the
7 distribution plan?

8 A It says that "Ripple plans to retain
9 twenty-five percent of all XRP issued to fund
10 operations and hopefully turn a profit. And
11 distribute the rest to incentive participation
12 of market makers, gateways and consumers to
13 utilize the protocol."

14 MS. WAXMAN: Did you get that?

15 THE REPORTER: Yes.

16 THE WITNESS: Sorry. I'll go a
17 little slower.

18 Q In November of 2014, was the plan to
19 use XRP to monetize the protocol?

20 A At that -- at that time, that was
21 the secondary strategy. I believe at that
22 time the primary strategy was growth of the --
23 growth of a payment network. Although, I'm
24 not -- it's hard for me to say because I
25 didn't -- I haven't seen this document before.

1 And I'm not sure if this document is just
2 limited to the company's strategy with respect
3 to the XRP Ledger.

4 And I know around that time, the
5 strategy emerged of what I now call the
6 RippleNet strategy. That built the payment
7 network and it's distinct from the XRP Ledger.
8 I'm not sure whether this reflects the
9 company's strategy or just the strategy with
10 respect to the XRP Ledger.

11 Q Let's just talk about the strategy
12 with respect to the ledger. I understand that
13 at some point, the company developed certain
14 products which they call -- which are under
15 the umbrella of RippleNet. But I want to
16 focus on the XRP Ledger and the company's
17 strategy in connection with the ledger.

18 Did the company seek to monetize the
19 ledger through X -- through XRP?

20 A The -- the -- um -- the company
21 considered as a possible revenue model, the
22 sales of XRP.

23 Q At the time, did the company have
24 any other possible sources of revenue?

25 A I believe at this time, the primary

1 focus was on the RippleNet strategy.

2 Q Did it have any product under the
3 RippleNet umbrella at the time?

4 A It's very difficult for me to place
5 this in time. I believe that was around the
6 time -- that was right around the time that
7 the previous like Ripple gateway tool evolved
8 into what later became xCurrent. That was
9 right around the time, I believe, of the
10 transition from products aimed directly at the
11 XRP Ledger to products aimed at RippleNet.

12 Q Are you talking about Ripple Trade?

13 A No. No. This is a product that, I
14 think, at that time was called Ripple Connect.
15 And it was not a consumer product. It
16 eventually became an enterprise product. It
17 was originally aimed at gateways. Companies
18 that would issue assets on the XRP Ledger.
19 And it was transitioning to become a -- the
20 beginning of what we now call RippleNet.

21 Q Was it transitioning to become what
22 is now xCurrent?

23 A That's correct.

24 Q So this is very, very early stage
25 RippleNet?